The 1970 Debates on Constitutional Review

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The appointment of The Committee of 50 to Re-examine the Illinois Constitution is an indirect result of a provision written into Article XIV of the 1970 Constitution. Section 1(b) states: "If the question of whether a Convention should be called is not submitted during any twenty-year period, the Secretary of State shall submit such question at the general election in the twentieth year following the last submission." Since the twenty-year deadline is approaching, the Committee of 50 will be reviewing a number of constitutional items, including the issue of the periodic convention question.

Fourteen states require the periodic submission of the constitutional convention question to voters. Eight states place the interval at twenty years. Four states have intervals of ten years, with Michigan choosing a sixteen-year and Hawaii a nine-year interval. While this is a recent provision in most of the constitutions which contain the requirement, it should be noted that the periodic question does not automatically lead to rewritten constitutions. In New Hampshire, which was the first state to adopt such a provision, the 1784 constitution is still in effect, as is Oklahoma's first constitution, adopted in 1907.

A periodic review of the Illinois Constitution looked especially attractive to the delegates responsible for framing the 1970 Constitution, because Illinois' 1870 Constitution had been extremely difficult to amend, and previous attempts at replacing it with a document more suited to the needs of a modern state had failed. The majority of delegates evidently believed that a periodic review would help to prevent future stalemates of the sort which had made past efforts at constitutional revision futile.

This was, however, by no means a unanimously held view. The periodic question was debated at the 1970 convention, sometimes hotly, and a look at some of the arguments offered in opposition can be instructive. The subject is not only historically interesting; some of the issues raised in 1970 are likely to surface again, and if another constitutional convention is called the 1970 debates on the periodic question could even suggest a form the final document might take.

When Peter Tomei, chairman of The Suffrage and Constitution Amending Committee, presented Section 1(b) to the delegates, he said that the reason for the periodic question was that previous legislatures had not been as responsive as they should have been to the need for a constitutional convention. The committee, Tomei said, "felt that this was a check by the people on the legislature, if it failed to put something on the ballot. We are perfectly confident that if the legislature does do the amending process job over the years, the people will turn down - and in fact should turn down - a Constitutional Convention proposal. This was a check against legislative inaction." In his overview of the committee's work, Tomei emphasized that the periodic question did not mean that the intention of Section 1(b) was the generation of constitutional conventions. "Our proposal," he said, "does not mean - does not mean - that we will have a constitutional convention every twenty years. Indeed, if we do our work properly, perhaps it will be some time before we actually need another convention. Or, if the legislature does its work in terms of accommodating itself to change, we will not need a constitutional convention."

Delegate Mary Pappas, who served on the Legislative Committee, objected that constitutions are best revised piecemeal, by amendment, rather than by the more drastic revision of the entire document at a constitutional convention. "We talk about representative government," she said, "and confidence in our legislature to have carte blanche powers - for instance, over tax matters - and yet this proposal reflects and admits a continuous and basic mistrust of our representative institutions and, more specifically, the right of our representatives to determine whether or not we need a constitutional convention and, therefore, should submit this question to the people."

Pappas pointed out that the question had been submitted to the voters by the legislature three times during this century. "Yet we are saying by this proposal that this is not enough," Pappas said. She believed that Section 1(b) undermined the stability which was necessary to constitutions because they, unlike statutes, should be "more lasting and more secure from unnecessary change."

The differences between Tomei and Pappas reflect the fundamental differences between those who favored and those who opposed the periodic question. On the one hand, it was seen as an encouragement to the legislature to amend the constitution in a timely and appropriate fashion, and could be understood as a practical check on legislative inaction. Given Illinois' frustrating experience with the 1870 Constitution, and the fact that previous attempts at reform had not allowed the 1870 Constitution to be amended as smoothly as the reformers had hoped, the idea of putting the convention question before the voters regularly was attractive. On the other hand, the proposal could be seen as a usurpation of powers which properly belong to the legislature, one which puts the state's most fundamental law on shaky and tentative ground.

Pappas proposed an amendment to delete Section 1(b). The debates which her amendment provoked shed some light on the subject; they also occasionally generated some heat, and no small amount of confusion.

The confusion, for the most part, involved the notion that Section 1(b) called for a periodic convention, as if a constitutional convention would be held every twenty years, and the state's basic law rewritten regularly. This misconception was not helped by the frequent reference to Section 1(b) as "the periodic call," rather than "the periodic question." In fact what the Secretary of State is mandated to do is not to call for a new convention, but to place the question on the ballot.

In arguing against Section 1(b), George Lewis, chairman of the Legislative Committee, argued that the legislative process was stifled by Section 1(b). Legislators could ignore their duty to propose timely constitutional amendments, since they could assume that sooner or later a convention would be called and the duty taken over by another body. For their part, citizens would not press for constitutional reform, either directly or through lobbying their representatives, assuming, as the legislators would, that the issue would come up automatically. In addition, the constitution might be brought up for revision at a wrong time. (Presumably this meant a time when popular passions could influence the composition of a convention and its outcome in a negative way.)

Lewis cited the experience of some other states with the periodic question. Using as his sources The Book of the States, 1968-9 and State Constitutional Revisions Affecting Legislatures, Lewis argued that since New Hampshire started the practice in 1784, there had been some sixty opportunities for a constitutional convention, and of the resulting conventions "only one or two" could be called successful. Earlier in the convention debate, New York's example had been offered as an effective use of the periodic question. Lewis disagreed, saying that although conventions had been called in 1915, 1938 and 1957, none had resulted in a successful constitutional submission.

In response, Peter Tomei pointed out that New York's 1915 convention proposals were submitted to the voters as an entire document, to be accepted or defeated. In 1938, however, the proposals were submitted to the voters as separate amendments to the existing constitution. Tomei noted that successful revision in many cases depended on whether the constitution was submitted as a single document or a series of proposals. Finally, Tomei said, in other states legislators had not shirked legislative responsibility, but placed amendments on the ballot regularly. Proposal Section 1(b) could in fact stimulate legislative initiative, eliminating the need for a convention.

Some other issues surfaced in the debate on the Pappas amendment. Leonard Foster, who served on the Bill of Rights Committee, argued that the automatic question would lead to constitutional conventions becoming "super legislatures," because the legislature would have avoided its obligations. Thomas Kelleghan, also on The Bill of Rights Committee, argued that "stability and the sense of stability are essential to a sound Constitution," and felt that Section 1(b) was "dangerous and unnecessary." In her closing arguments, Mary Pappas said that the legislature should be trusted to call for a convention, and suggested that it would make more sense to loosen up the Gateway amendment, a previous attempt to ease the amending process.

One particularly illuminating comment came from William Fay, chairman of the Judiciary Committee. He said, in support of Section 1(b), "We should give the people either the automatic vote or the initiative. . . . I for one am scared to death of the initiative procedure and would much prefer this automatic vote. . . ." This came up later in discussion during the second reading. Stanley Johnson of the Revenue and Finance Committee, arguing against a final effort to delete Section 1(b), said, "Minority 1(a) of the Suffrage (committee) dealt with the constitutional initiative, and one of the strong arguments put out to defeat that was the automatic Call. . . . if you don't want to resurrect 1(a), vote to keep the Call."

The Pappas amendment to delete Section 1(b) was defeated, 46 for and 62 against. Then Paul Elward of the Revenue and Finance Committee introduced an amendment to change the language of Section 1(b) to read "in the years 1990 and every 20 years thereafter..." His argument was that as it stood, the next call would come in 1988, and this was close to the end of a decade, when districts could be malapportioned. After the reapportionment following the census the electionof delegates would be more equitable. This amendment passed after debate, 50 to 41. Another amendment, offered by Dwight Friedrich of the Executive Article Committee, would amend Section 1(b) to make the period of time thirty rather than twenty years. This amendment failed.

When the document moved to second reading, Peter Tomei submitted the final language. The Elward amendment's language had created too much confusion to be retained. It did not convey clearly enough the fact that the 1970 convention wanted a review of the constitution "about every twenty years." In practice the Elward amendment could allow a range of twenty to twenty-eight years. Although he proposed an alternative to the original language of Section 1(b), in the event that the original language failed, Tomei argued for its retention. The Illinois Supreme Court had ruled in Livingston v. Ogilvie that the 1970 Convention could be called without defect, despite the fact that districts might be slightly out of proportion, since the product of the convention would ultimately be decided upon by the people.

Charles Coleman, vice-chairman of The Executive Article Committee, made another motion to delete Section 1(b). Convention President Samuel Witwer argued for the defeat of Coleman's motion. Section 1(b) "is just saying, 'Let the people decide,'" Witwer said. "And I, for heaven's sake, cannot understand why there is anything wrong at these long intervals with giving to the people of the state the right to say whether they want to have their basic law and their basic institutions looked at anew. . . . Vote for the people on this one."

Just before the final vote Stanley Johnson made the reference to the constitutional initiative referred to earlier, and Coleman argued that his motion should carry; he cited, among other reasons, the cost of the 1970 Convention and said that it was wrong "to play games with the people's money."

Coleman's motion to delete failed, 34 for it, 70 against and 2 passing. The language now in our Constitution had been accepted by the delegates.

Conclusion

A survey of the debates over the question of a periodic constitutional review reveals several points which are relevant to the task of the Committee of 50. One point is that the worst fears of Section 1(b)'s opponents were not realized. The legislature has placed constitutional amendments on the ballot, and there is no evidence that Section 1(b) has led either to legislative inaction, or to public apathy with regard to constitutional revision.

Another important point is that Section 1(b) was seen during committee discussion as an alternative to the initiative and referendum. The initiative in Illinois is currently limited to the legislative article, and it is unlikely that legislators will place the broader initiative on the ballot. In Illinois, the institution of the initiative and referendum would require a constitutional convention, and this is almost certain to come up during the public hearings on the 1970 Constitution. The intention of at least some of Section 1(b)'s sponsors was that the section should be offered as an alternative to the initiative, and this should be kept in mind during the inevitable debates on the subject.

Finally, Peter Tomei's observations about New York's process of constitutional revision are important: if a constitutional convention is more likely to fail its mission when a constitution is submitted to the voters as a single document, and more likely to succeed when its proposals are offered as a series of amendments to be decided separately, this fact should be made clear to the delegates to any future constitutional convention. Although an entire document was submitted to voters in 1970, the case was a special one; the Illinois Constitution required major revision. Even then, controversial questions were submitted as side issues.

The debates over Section 1(b) of Article XIV of Illinois' Constitution may shed light on some of the issues likely to surface during the public hearings to be sponsored by the Committee of 50: legislative responsibility, the initiative and referendum, and the form a constitutional submission might take.

Printed by authority of the State of Illinois
Legislative Printing Unit Order 5450
April 1987 - 200 copies